Supreme Court, U.S.
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No. 88-1476

In The

Supreme Court of the United States

October Term, 1988

C. T. CARDEN, LEONARD L. LIMES, and MAGEE DRILLING COMPANY,

Petitioners,

v.

ARKOMA ASSOCIATES, ET AL.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

JOINT APPENDIX

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Petition For Certiorari Filed March 9, 1989
Certiorari Granted May 1, 1989

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CHRONOLOGICAL LIST OF
RELEVENT DOCKET ENTRIES

DATE	NR.	PROCEEDINGS
5/23/85	1	Complaint Issd., 2 Summs.
6-19-85	2	Defts', C. Tom Carden and Leonard L. Limes Mtn. & ORDERED that same have an additional 20 days to file responsive pleadings. (AJM) 6-23-85 dktd. 6-24-85.
6-27-85	3	Rtn. of summs. to C. Tom Carden and Leonard L. Limes svd. 5-30-85.
7-12-85	4	Rtn. of summs. to Orri Navigation LInes (sic) svd.7-11-85.
7-12-85	5	*ANSWER* of C. Tom Carden and Leonard Limes to Pltf's compl.t (sic) and counterclaim agnst Arkoma Associates.
7-16-85	6	Ntc. of Phone Conf. set for 7-30-85 at 11:15 a.m. (AJM) dktd. 7-17-85.
8-1-85	7	M.E. 7-30-85; Phone Conf. held; Amends. to be filed w/in 30 days; final PTC set for 2-26-86 at 8:30 a.m.; TRIAL w/out jury set for 3-10-85 at 9:00 a.m. (AJM) dktd. 8-1-85.
8-13-85	8	*ANSWR* (sic) of Arkoma Associates to Counter claim of C. Tom Carden and Leonard Limes.
9/4/85	9	Deft's mtn & ORDER that Richard K. Ingolia be enrolled as co-counsel for defts. (AJM) 9/4/85; dktd. 9-5-85.
10-9-85	10	Pltf's Ntc. of Depo. of Don Magee on 10-14-85.
10-9-85	11	Pltf's Ntc. of Depo. of Larry Burnett on 10-14-85.

DATE	NR.	PROCEEDINGS
11-21-85	12	Pltf's Ntc. of Depo. of C. Tom Carden on 12-6-85.
11-21-85	13	Pltf's Ntc. of Depo. of Leonard Limes on 12-6-85.
12-5-85	14	Defts' Mtn. for Summ. Judg; HRG. set for 1-15-86 at 10:00 a.m. w/judge.
12/17/85	15	Defts' mtn to partially dismiss for failure to state a claim; hrg set 1/15/86, 10am bfr judge.
12-24-85	16	Pltf's Witness List.
12-27-85	17	Defts' Witness List.
12-31-85	18	Mtn. of Magee Drilling Company to Intervene as a Deft.; HRG set for 1-15-86 at 9:00 a.m. w. Mag. Fonseca.
12/31/85	19	Mtn of defts for leave to amend answer & counterclaim; Hrg set 1/15/86 at 9:00 a.m. bfr Mag RAF.
12-30-85	20	Pltf's Mtn. & ORDERED that defts' Mtn. for Summ. Judg. set for 1-15-86 is CONTINUED to 1-29-86 at 10:00 a.m. w/ Judge. (AJM) 1-2-86 dktd. 1-3-86.
1-10-86	21	Defts' Mtn. & ORDERED taht (sic) the hrg. on their mtn. to amend their answer and Magee's Mtn. to intervene set for hrg. on 1-15-86 is CONTINUED to 1-29-86 at 9:00 a.m. w/ Mag. Fonseca. (AJM) 1-8-86 dktd. 1-9-86.
1-14-86	22	Pltf's Mtn. for Summary Judgment; HRG. set for 1-29-86 at 10:00 a.m. w/ Judge.
1-21-86	23	Pltf's ntc of depos of C. Tom Carden on 1-24-86.

DATE	NR.	PROCEEDINGS
1-21-86	24	Pltf's ntc of depos of Leonard L. Limes on 1-24-86.
1-21-86	25	Pltf's memo in oppos to mtn by Magee Drilling Co to intervene.
1-21-86	26	Pltf's memo in oppos to mtn by defts' for leave to amend answer & counterclaim.
1-21-86	27	Memo by defts in oppos to pltf's mtn for summ judg.
1-21-86	28	Pltf's memo in oppos to defts' mtn to partially dismiss for failure to state a claim.
1-30-86	29	M.E. 1-29-86; HRG. on Magee Drilling's Mnt. to Intervene – ORDERED DENIED. (MAG. FONSECA) dktd. 1-30-86.
1-30-86	30	M.E. 1-29-86; HRG. on deft's Mtn. for Leave to Amend Answers – ORDERED GRANTED and Mnt. for Leave to Amend Counterclaim – ORDERED DENIED. (MAG. FONSECA) dktd. 1-30-86.
2-4-86	31	Pltf's Mnt. & ORDERED that same has has (sic) leave to file the Reply Memo. in support of pltf's Mtn. for Summ. Judg. (AJM) 2-1-86 dktd. 2-5-86.
2-4-86	32	Defts' Supple Memo. in Support of Their Mtn. for Summ. judg and in Oppo. to Pltf's Mtn. for Summ. Judge.
2-4-86	33	Pltf's Reply Memo In Support of Pltf's Mtn. for Summ. Judge.

DATE	NR.	PROCEEDINGS
2-6-86	34	M.E. 2-4-86; ORDERED that Pltf's Mtn. for Summ Judg. and Defts' Mtn. for summ. Judg are DENIED. FURTHER ORDERED that defts' Mtn. to Partially Dismiss Pltf's Complt for failure to state a claim is DENIED. (AJM) dktd. 2-7-86.
2-6-86	35	Mtn by defts & ORDER hrg on Mtns to Reconsider Mag's Orders is set 2-26-86 at 10:00 a.m. (AJM) DKTD 2-10-86.
2-7-86	36	Mtn by defts for Reconsideration of Mag's Order.
2-10-86	37	Defts' Mtn. to Dismiss for Lack of Jurisdiction; HRG. set for 2-26-86 at 10:00 a.m. w/ Judge.
2-18-86	38	Pltf's Memo. in Oppo. to Mtn. to Dismmiss (sic).
2-18-86	39	Pltf's Memo. In Oppo. to Defts' Mtn. for Reconsideration of Mag's Order.
2-18-86	40	Pltf's Mtn. & ORDERED that the Mtn. to Dismiss for Lack of Jurisdiction and the Mtn. to Review the Mag's Rulings will be heard at the PTC set for 8:30 a.m. on 2-26-86 (AJM) 2-18-86 dktd. 2-19-86.
5-5-86	58	M.E. 5-5-86; HRG. on defts' Mtn./ to Amend Answer & Counterclaim; Mtn. of Magee to Intervene; Deft's and Mageee (sic) Drilling Co. to Ext. the Disc. Deadline – ORDERED re-hrg. is set for 5-7-86 bfr. Mag. (MAG. FONSECA) dktd. 5-6-86.

DATE	NR.	PROCEEDINGS
6-16-86	59	(5th Cir) ORDERED taht (sic) Pet. of Carden and Limes for leave to appeal an interlocutory order denying their mtn. to dism Pltfs' action for lack of diversity is held in abeyance pending Ct's decision in 86-3128, Mesa Operating Ltd. Partnership v. La. Intrastate Gas Corp. dktd. 6-17-86.
6-25-86	60	Ntc. of Phone Conf. set for 7-8-86 at 3:15 p.m. (AJM) dktd. 6-25-86.
6-26-85 (sic)	61	M.E. 6-26-86; Mtn. of defts for Leave to file an Amended Answer and to Amend Counter-Claim is GRANTED and the Mtn. of Magee Drilling Commpany to Intervene is GRANTED. (AJM) dktd. 6-26-86.
7-9-86	62	M.E. 7-8-86; Phone Conf. held; Amends to be filed w/in 30 days; final PTC set for 2-2-87 at 1:15 p.m.; TRIAL w/out jury set for 2-9-87 at 9:00 (AJM) dktd. 7-10-86.
7-10-86	63	*AMENDED ANSWER* of C.T. Carden and Leonard Limes to complt and Counterclaim agnst. Arkoma.
7-10-86	64	*ANSWER* of Magee Drilling Company to Comp!t of Arkoma.and counterclaim angst. Arkoma, David Hepburn, Eldon Qualls, Richard Ledbetter and Dudley Merkel. 4 summs. Is.
8-5-86	65	Petition of Intervention of Magee Drilling Company.
8/5/86	66	Ex Parte mtn of Magee Drilling & ORDER granting leave to file amended answer & counterclaim (AJM) 8/6/86 dktd 8/7/86.

DATE	NR.	PROCEEDINGS
8/6/86	67	Intervenor's amended answer & counterclaim.
8/5/86	68	Ex Parte mtn of C. T. Carden & Leonard L. Limes & ORDER granting leave to file amended answer & counterclaim (AJM) 8/6/86 dktd 8/7/86.
8/7/86	69	*Amended Answer* & Counterclaim of C.T. Carden & Leonard L. Limes; no new ptys added.
9-19-86	70	(5th Cir.) ORDERED that Pltf. Petitoin (sic) is DENIED. dktd. 9-22-86.
9-23/86	71	Pltf's *Answer* to Defts' Amended Answer and Counterclaim.
9-23-86	72	Defts', David Hepburn, Eldon Qualls, Richard Ledbetter and Dudley Merkel Mtn. To Dismiss; HRG. set for 10-8-86 at 10:00 w/ judge.
9/23/86	73	Pltf's *Answer* to intervenor Magee Drilling Co answer & counterclaim.
9-30-86	74	Intervenor's memo. in Oppo. to Counter Claim defts' Mtn. to Dism.
11-13-86	75	M.E. 11-12-86; The Motion of Arkoma to Dism. is DENIED. (AJM) dktd. 11-14-86.
12/4/86	76	Pltf's witness list.
1/6/87	77	ANSWER of Arkoma Assoc, David A. Hepburn, Eldon E. Qualls, Richard K. Ledbetter, & Dudley B. Merkel to counter claim of C. Tom Carden & Leonard L. Limes.
1/6/87	78	ANSWER of Arkoma Assoc, David A. Hepburn, Eldon E. Qualls, Richard K. Ledbetter, & Dudley B. Merkel to counterclaim of Magee Drilling co. (sic)

DATE	NR.	PROCEEDINGS
1-20-87	79	Intervenor's Req. & Issd. 3 usbps.
1-23-87	80	Rtn. of subps. to Richard Ledbetter, Arkoma Assoc and Elden (sic) Qualls svd. 1-22-87.
2-3-87	81	PTO: PTC held on 2-2-87; TRIAL w/out jury set (AJM) dktd. 2-3-87.
2-3-87	82	M.E. 2-2-87; ORDERED that TRIAL is CONTINUED to 5-20-87 at 10:00. PTC is CONTINUED to 5-12-87 at 4:00 (AJM) dktd. 2-4-87.
2-11-87	83	Req. by defts', Carden & Limes & Issd. 5 subps.
3/31/87	84	Ntc of dep by C. Tom Carden, Leonard L. Limes & Magee Drilling Co of United Rig Builderees (sic), Unirig, INc,, (sic) Clifford W Cunningham, Jr., & James t. Littlepage on 4/6/87.
4-9-87	85	Intervenor's Ntc. of Dep. of Don Young on 4-15-87.
4-13-87	86	Intervenor's Ntc. of Dep. of United Rig Builders, Clifford Cunningham Jr. and James Littlepage on 4-17-87.
4-23-87	87	Mtn. of C. Carden and Leonard Lines (sic) & Intervenor, Magee Drilling Co. & ORDERED that an Exped. Hrg. is set for 5-6-87 (AJM) 4-24-87 dktd. 4-27-87.
4-27-87	88	Mnt. of C.T. CArden (sic) & Leonard Limes for Cont. of Trial on Merits.
4-30-87	89	Intervenor's Ntc. of Dep. of Don Young on 5-11-87.
5-1-87	90	Intervenor's Ntc. of Dep. of Don Young on 5-8-87

DATE	NR.	PROCEEDINGS
5/4/87	91	Opp of Arkoma Asso., Dudley Merkel, David Hepburn, Richard Ledbetter, & Eldon Qualls to mtn of cont by C.T. Carden, Leonard Limes & Magee Drilling Co.
5-6-87	92	HRG. on Defts' Mtn. to Cont. Trial of 5-20-87 – ORDERED DENIED. dktd. 5-6-87.
5-6-87	93	Pltf's Mtn. & ORDERED that the firm of Lowe, Stein, Hoffman & Allweiss are subst. as attys' for same. (AJM) 5-6-87 dktd. 5-7-87.
5-14-87	94	Supple & Amended PTO TRIAL set for 5-20-87 w/out jury (AJM) dktd. 5-14-87.
5-14-87	95	Joint mtn & ORDER that John A. Gordon & Blake Arata be enrolled as addt'l counsel for C. T. Carden, L. L. Limes & Magee Drilling. (AJM) 5-18-87, dktd 5-18-87.
5/21/87	96	Dep of Eldon Qualls tken (sic) on 9/23/85.
5/21/87	97	Dep of Larry C. Burnett taken on 10/14/85.
5/21/87	98	Dep of Don Young taken on 5/8/87.
5/21/87	99	Dep of James Littlepage taken on 4/17/87.
5/21/87	100	Dep of Robert Wagener taken on 2/25/86.
5/21/87	101	Dep of Clifford Cunningham taken on 4/17/87.
5/21/87	102	Dep of Floyd Yeager taken on 5/28/86.
5/21/87	103	Dep of Joe Claus taken on 1/11/87.

DATE	NR.	PROCEEDINGS
5/20/87	95a	NON JURY TRIAL: witnesses called; CONTD to 5/21/87, 9am bfr judge (AJM) dktd 5/29/87.
5/21/87	104	N/J TRIAL CONTD: witnesses called; proposed Findings of Fact & Conclusions of Law to be filed 15 days after receipt of transcript of trial; that matter will be taken under submission (AJM) dktd 5/29/87.
6/24/87	104	Transcript of Trial held on 5/20 & 5/21/87 bfr Judge. (VOL. I)
6/24/87	105	Transcript of Trial held on 5/20 & 5/21/87 bfr JUdge. (sic) (VOL. II)
6-26-87	106	Joint mtn and ORDER that Suggesting Findings of Fact, Conclusion of Law and Post-Trial Memo shall be filed by 7-19-87. (AJM) 6-29-87 DKTD 6-29-87.
7-29-87	107	Pltf's Trial Memorandum.
7-29-87	108	Post-Trial Memorandum of Arkoma, David Hepburn, Qualls, Ledbetter and Merkel.
7-29-87	109	Pltf's Proposed Findings of Fact and Conslcusions (sic) of Law.
7-29-87	110	Findings of Fact and Conclusions of Law subm by Defts' & Intervenor.
7-29-87	111	Trial Memo. of Defts' & Intervenor's.
7-29-87	112	Post Trial Memo. of Defts' & Intervenor's.
7-29-87	113	FINDINGS OF FACT & CONCLUSIONS OF LAW. (AJM) 7-29-87 dktd. 7-29-87.

DATE	NR.	PROCEEDINGS
7-29-87	114	JUDGMENT: ORDERED in favor of Pltf. and angst (sic) defts' for $467,806.25 plus int. from 2-18-85 til (sic) paid; In favor of Arkmoa, (sic) David Hepburn, Qualls, Ledbetter and Merkel dismissing Counterclaim filed by C. Tom Carden and Limes w/ prej at their costs; In favor of Arkoma, Hepburn, Qualls, Ledbetter and Merkel dism the Intervention and Counterclaim of Magee Drilling w/ prej. at its costs. (AJM) 7-29-87 dktd. 7-29-87.
8-5-87	115	Pltf's Mtn. to Amend Findings of Fact and Conclusions of Law, for New Trial, and to Dism; HRG. set for 8-26-87 at 9:00 w/ Judge.
8-6-87	116	TRANSCRIPT of proceedings held on 5-20-87 and 5-21-87 bfr. Judge.
8-6-87	117	TRANSCRIPT of proceedings held on 5-20-87 and 5-21-87.
8-10-87	118	Pltf's Mtn. to Amend Judgment; HRG. set for 9-9-87 at 9:00 w/ Judge.
8-10-87	119	Pltf's Opo. to Mtn. for Extension to Stay.
8-5-87	115a	Mtn. of defts' & Intervenor & ORDERED ...at the judg. entered on 7-29-87 is stayed til 30 days after the disposition of mtn. to amend findigns (sic) of fact and conclusions of law, for new trial, and to dism. (AJM) 8-12-87 dktd. 8-13-87.
8-5-87	115b	Mtn. of Defts' and Intervenor & UNSIGNED ORDER to Subst. Letter of credit for Bondg. (sic)

DATE	NR.	PROCEEDINGS
8-7-87	117a	Mtn. of defts' & Intervenor & ORDERED that the Supple Mtn. and Amend Findings of Fact and Conclusions of Law, For New trial and to Dism. are allowed to be filed. (AJM) 8-12-87 dktd. 8-13-87.
8-12-87	120	Supplemental Mtn. to Amend Findings of Fact and Conslusions (sic) of Law, For New Trial, and to Dism.
8-13-87	121	M.E. 8-13-87; Hrg. on defts' and Intervenor's Mtns' to Amend Findings of Fact and to Subst. Letter of Credit for Bond. If Pltf. has any objs. to mtns. to be filed by 8-20-87 at 5:00 (AJM) dktd. 8-13-87.
8-13-87	122	Pltf's Opo. to Supple Mtn. to Amend Findings of Fact and Conclusions of Law., for New Trial and To Dism.
8/13/87	123	Pltf's mtn to cont hrg on mtn to amend Findings of Fact & Conclusions of Law, for New Trial & to Dismiss & ORDERED that same be cont to 9/9/87 at 9:00 a.m. (AJM) 8/14/87 dktd 8-17-87.
8-18-87	124	*Ntc. of Appeal* by C.T. Carden and Leonard Limes of judgment entered on 7-29-87.
8-19-87	XX	Ntc of Appeal forwarded to all parties. (JMD)

DATE	NR.	PROCEEDINGS
9-10-87	125	M.E. 9-9-87; ORDERED that Pltf's Mtn. to Amend judg. is GRATNED; (sic) FURHTER (sic) ORDERED that counsel for pltf. prepare a proposed amended judg. and subm. to ct. by 9-17-87. ORDERED that Defts' and Intervenors' Mtn. to Amend Findings for New Trial and to Dism are DENIED; ORDERED that defts' and Intervenors Mtn. to Subst. Letter of Credit for Bond is GRANTED. (AJM) dktd. 9-10-87.
9-9-87	126	Pltf's Transcript Order of proceedings held on May 20-21, 87.
9/14/87	xx	Record forwarded to Court of Appeals. (dlm)
10-7-87	127	Letter dated 10-7-87 to Clerk from Richard Ingolia in re: letter of credit.
10-7-87	128	Jnt. Mtn. & ORDERED that the orig. letter of credit is approved and to be del. to Clerk's office for safekeeping til (sic) further orders of Ct. (AJM) 10-9-87 dktd. 10-8-87.
9-17-86	126a	JUDGMENT: ORDERED in favor of pltf. and agsnt. (sic) defts', Carden and Limes for $467,806.25 plus all addit'l atty's fees incurred after 4-30-87; In favor of Arkoma, Hepburn, Qualls, Ledbetter and Merkel dism the counterclaim filed by Carden and Limes w/ prej. at their costs; In favor of Arkoma, Hepburn, Qualls, Ledbetter and Merkel dism. the intervention and counterclaim filed by Magee w/ prej at its costs. (AJM) 9-17-87 dktd. 10-23-87.
10/27/87	XXX	Doc No. 126a fwd. to Ct. of Appeal (PNC)

DATE	NR.	PROCEEDINGS
12-8-87	129	Mtn. of Leonard Limes and C.T. Carden & ORDERED that an Exped. Hrg. is set for 12-16-87 at 9:00 on Mtn. for leave to file Ntc. of Appeal. (AJM) 12-10-87 dktd. 12-10-87.
12-10-87	130	Mtn. of C.T. Carden and Leonard Limes for Leave to ifle (sic) Ntc. of Appeal.
12-15-87	131	Pltf's Memo. in Opo. to Mtn. for leave to file Ntc. of Appeal.
12-16-87	132	Memo of C. T. Carden, Leonard L. Limes & Magee Drilling Co. in response to pltf's opp to mtn for leave to file ntc of appeal.
12-17-87	133	M.E. 12-16-87: ORDERED that time for defts to file a ntc of appeal of judg is EXTENDED to 10 days from date of entry of this order. (AJM) dktd 12-17-87.
12-18-87	134	Ntc. of Appeal of C.T. Carden and Leonard Limes of judg. entered on 10-23-87 pursuant to leave granted on 12-16-87.
12/18/87	xx	Notice of Appeal forwarded to all parties. (dlm)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ARKOMA ASSOCIATES, Plaintiff	*	CIVIL ACTION
	*	NO: 85-2295
VERSUS	*	SECTION "D" MAG. 4
C. TOM CARDEN AND LEONARD L. LIMES, Defendants	*	

* * * * * * * * * * * *

COMPLAINT

The complaint of Arkoma Associates, an Arizona limited partnership appearing herein by and through DAVID A. HEPBURN a general partner, respectfully avers:

1.

The defendants are C. Tom Carden, an individual of the full age of majority and resident of the Parish of Orleans, State of Louisiana and Leonard L. Limes, an individual of the full age of majority and resident of the Parish of Jefferson, State of Louisiana.

2.

Jurisdiction is founded on diversity of citizenship as provided in 28 U.S.C. §1332. The matter in controversy, exclusive of interest and costs, exceeds the sum of $10,000.00.

3.

On June 27, 1984, Arkoma Associates and McGee Drilling Company executed an equipment lease in the form annexed hereto as Exhibit "A".

4.

Defendants Carden and Limes and Don McGee executed a guarantee agreement guaranteeing all obligations of McGee Drilling Company under the aforesaid lease agreement in the form annexed hereto as Exhibit "B".

5.

On or about January 16, 1985, McGee Drilling Company tendered back to Arkoma Associates the drilling rigs under lease.

6.

Defendants Carden and Limes were put on notice of the default by McGee Drilling Company for non-payment of rent for the quarter commencing February 1, 1985 by letter dated February 18, 1985, a copy of which is annexed hereto as Exhibit "C".

7.

Defendants failed to cure said default.

8.

As a result of this default, defendants Carden and Limes are indebted to plaintiff for the following amounts.

a). Accelerated Rent	$ 432,000.00
b). Drill pipe and equipment Replacement	$ 63,000.00
c). Storage charges (Estimate)	$ 10,000.00
d). Attorneys fees (Estimate)	$ 50,000.00
e). Costs (Estimate)	$ 5,000.00
TOTAL	$ 560,000.00

WHEREFORE, plaintiff demands judgment against defendants for the sum of FIVE HUNDRED AND SIXTY THOUSAND AND NO/100 ($560,000.00) DOLLARS plus legal interest thereon from date of judicial demand and all costs of these proceedings.

Respectfully Submitted:

McCLOSKEY, DENNERY, PAGE & HENNESY

By: /s/ Mitchell J. Hoffman
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Metairie, LA 70002

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ARKOMA ASSOCIATES	:	CIVIL ACTION NO. 85-2295
VERSUS	:	SECTION "D" Mag. 4
C. TOM CARDEN	:	ANSWER AND
LEONARD L. LIMES	:	COUNTERCLAIM

DEFENSE

1.

Defendants admit the allegations contained in Paragraph 1.

2.

Defendants admit the allegations contained in Paragraph 2.

3.

Defendants denies the allegation contained in Paragraph 3 and contends that this contract was amended on the 18th day of July, 1984. A copy of which is annexed hereto as Exhibit "A".

4.

Defendants denied the allegation contained in Paragraph 4.

5.

Defendants admit the allegation contained in Paragraph 5.

6.

Defendants denies the allegation contained in Paragraph 6.

7.

Defendants denies the allegation contained in Paragraph 7.

8.

Defendants denies the allegation contained in Paragraph 8.

COUNTERCLAIM

As their counterclaim against Arkoma Associates, defendants allege:

1.

Jurisdiction is founded on diversity of citizenship as provided in 28 U.S.C. 1332. The matter in controversy, exclusive of interest and costs, exceeds the sum of $10,000.00.

2.

On June 27, 1984, Magee Drilling Company, A Texas Corporation executed a contract with Arkoma Associates, presumably a Limited Partnership, represented by Richard Ledbetter, presumably a general partner, acting on behalf of other general partners, David A. Hepburn, Eldon Qualls and Dudley B. Merkel.

3.

The terms of the lease contained a provision requiring a written joint inventory to be signed by Lessor and Lessee before the release of the equipment by the Lessor to the Lessee.

4.

The inventory was performed in Oklahoma City, by Don Magee, President of Magee Drilling Company, as the rigs were awaiting shipment to South Texas. Much of the equipment was missing, a copy of which is annexed to Exhibit "A", initialed by Arkoma and Magee Drilling Co. Hidden from view of the inspection was blantant (sic) sabotage.

5.

The reliance on the representations of Arkoma and other individuals that the rigs were completely outfitted and ready for use cause many delays and forced heavy losses as a result of this misrepresentation.

6.

Eventually the loss multiplied and forced Magee Drilling Company to go out of business and tendered the rigs back to the Lessor in accordance with the lease.

7.

As a result of plaintiff misrepresentation the Magee Drilling Company had a loss of $676,172.00 in 1984.

8.

This loss in 1984 could not be overcome in the early party (sic) of 1985 and the officers were forced to meet

with the representatives of Arkoma Associates to discuss a suitable compromise of the rigs rentals.

9.

Without any solution to the problems facing Magee Drilling Company the company continued to lose money and the investment of defendants were lost and now the guaranty of Limes and Carden are called upon to make whole the carelessness and neglectfulness of Arkoma Associates.

10.

The defendants were not privy to the negotiation and there were exchanges of information which could have been supportive of misrepresentation, fraud and injurious reliance and these Facts are known to the plaintiff and Magee Drilling Company and the defendants must rely upon discovery to develop its defense.

11.

The defendants have reason to believe that certain individuals as well as the plaintiff may have engaged in a conspiracy to defraud the defendants herein, such information being solely in the knowledge of the plaintiff and other individuals and that discovery is necessary to protect the interest of defendants.

12.

The defendant reserve its right to amend and add to its answer and counter claim to include any allegation which may prove pertinent in its discovery:

1) That plaintiff takes nothing by his its (sic) claim:

2) That defendant have judgment against plaintiff in the amount $999,272.00.

3) That defendant be awarded cost herein:

4) That defendant be awarded reasonable attorney fees.

5) That the court grant such other and further relief as the court may deem proper.

Dated July 12, 1985

Respectfully submitted,

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(504) 831-9951
Attorney for Defendant

(Certificate of Service omitted in printing)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ARKOMA ASSOCIATES	*	CIVIL ACTION
VERSUS	*	NO: 85-2295
C. TOM CARDEN AND LEONARD L. LIMES	*	SECTION "D"
	*	MAG. DIV. 4

* * * * * * * * * * * * *

ANSWER TO COUNTER-CLAIM

NOW COMES Arkoma Associates, an Arizona Limited Partnership, and for answer to the counter-claim filed herein respectfully avers:

FIRST DEFENSE

The counter-claim fails to state a claim against plaintiff upon which relief can be granted.

SECOND DEFENSE

This Court lacks jurisdiction over the subject matter of the counter-claim.

THIRD DEFENSE

AND NOW, for answer to the individual allegations of the counter-claim, plaintiff, Arkoma Associates, respectfully avers:

I.

The allegations of paragraph 1 are denied.

II.

A lease contract was entered into on June 27, 1984 by and between Magee Drilling Company and Arkoma Associates. The lease contract is a written document and is the best evidence of its contents.

III.

The allegations of paragraph 3 are denied. The lease contract referred to therein is a written document and is therefore the best evidence of its contents.

The allegations of paragraph 4 are denied.

IV.

The allegations of paragraphs 4, 5, 6, 7, 8, 9, 10, 11, and 12 are denied.

WHEREFORE, Arkoma Associates prays that this answer to counter-claim be deemed good and sufficient and that the counter-claim filed herein be dismissed at defendant's cost.

LEMLE, KELLEHER, KOHLMEYER,
DENNERY HUNLEY, MOSS & FRILOT

By: /s/ Mitchell J. Hoffman
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Attorneys for
Arkoma Associates

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ARKOMA ASSOCIATES	*	CIVIL ACTION
VERSUS	*	NO. 85-2295
C. TOM CARDEN, LEONARD L. LIMES	*	SECTION "D", MAG. 4

* * * * * * * * * * * * *

AMENDED ANSWER AND COUNTERCLAIM

The amended answer and counterclaim of defendants, C. T. Carden and Leonard L. Limes (hereafter collectively "Defendants"), respectfully represents that they desire to amend their original answer and counterclaim in the following particulars:

I.

By substituting for paragraphs "1" through "8" of the Answer or Defense, the following:

I.

FIRST DEFENSE

The complaint fails to state a claim against the Defendants upon which relief can be granted.

II.

SECOND DEFENSE

Answering categorically the numbered paragraphs of Plaintiff's complaint, Defendants show:

A) The allegations of Paragraph 1 are admitted;

B) The allegations of Paragraph 2 are denied;

C) The allegations of Paragraph 3 are denied, except to admit that Plaintiff and Magee Drilling Company (hereafter "Magee") executed a document styled "equipment lease" dated June 27, 1984 which was amended July 18, 1984 by an instrument attached to Defendants' original answer as Exhibit "A" (hereafter "Lease");

D) The allegations of Paragraph 4 are denied except to admit that Defendants executed a guaranty agreement which is a written document, the content of which is the best evidence of the guaranty, all allegations in conflict therewith being denied;

E) The allegations of Paragraph 5 are admitted;

F) The allegations of Paragraph 6 are denied except to admit that Defendants received a letter dated February 18, 1985 from James D. Veselich, attorney at law, purporting to notify them of an alleged default by Magee under the terms of the Lease, and acknowledging acceptance of possession of the equipment which was the subject of the Leases (hereafter "Equipment") by Plaintiff and the receipt of all rental due in connection therewith through the date of repossession;

G) The allegations of Paragraph 7 are denied; and

H) The allegations of Paragraph 8 are denied.

III.

THIRD DEFENSE

Further answering, Defendants show:

A) The Lease is void and Plaintiff's claim unenforceable for the following reasons:

1) The Plaintiff failed to deliver the Equipment, to such an extent as to constitute:

a) Fraud in the execution of the Lease or *fraud in the factum;* and

b) Failure or partial failure of consideration;

2) To the extent that the Lease provides that Plaintiff may regain possession of the Equipment and yet hold Magee and Defendants liable for rental accruing thereafter, the Lease is unconscionable;

3) Those provisions in the Lease calling for the payment of future rental after Plaintiff's repossession of the Equipment constitute an unlawful penalty clause;

4) Plaintiff, Defendants, and Magee repudiated and/or voluntarily terminated the Lease at the time Plaintiff accepted delivery of the Equipment from Magee;

5) By accepting delivery of the Equipment from Magee, Plaintiff:

a) Elected its remedy of Lease cancellation; and

b) Is now estopped to claim enforcement of the Lease;

6) There was no meeting of the minds of Plaintiff, Defendants, and Magee as to the quantity or quality of the Equipment; and

7) Plaintiff failed to minimize any damages which it has sustained.

B) Magee paid all rental due under the Lease until such time as Plaintiff accepted possession of the Equipment from Magee;

C) In the event that this Court finds Defendants to be indebted to Plaintiff for any sums whatsoever, Defendants are entitled to setoff against any such sums all sums for which Plaintiff is indebted to Defendants, as hereinafter alleged, and all sums for which Plaintiff is indebted to Magee;

D) Plaintiff and Magee amended the Lease without the consent of Defendants thereby releasing Defendants from their guaranty of Magee's obligations under the Lease.

II.

By substituting for paragraphs "1" through "12" of the Counterclaim, the following:

I.

The following are made defendants in this counterclaim:

A) Arkoma Associates (hereafter "Arkoma"), a partnership organized under the laws of the State of Arizona;

B) David A. Hepburn (hereafter "Hepburn"), domiciled in the State of Arizona;

C) Eldon Qualls (hereafter "Qualls"), domiciled in the State of Oklahoma;

D) Richard K. Ledbetter (hereafter "Ledbetter"), domiciled in the State of Oklahoma; and

E) Dudley B. Merkel (hereafter "Merkel"), domiciled in the State of Arizona.

II.

On information and belief, it is alleged that Hepburn, Qualls, Ledbetter, and Merkel (hereafter collectively "Partners") are the general partners of Arkoma and, as such, liable, jointly, severally and *in solido,* with Arkoma for the obligations of Arkoma.

III.

Arkoma, through the Partners, its agents, employees, and/or officers represented to Magee Drilling Company (hereafter "Magee") C. T. Carden and Leonard L. Limes (hereafter "Carden/Limes") that the equipment to be leased (hereafter "Equipment") by Arkoma to Magee would be be (sic) fully outfitted and ready for use and capable of drilling to a depth of 7,500 feet (hereafter collectively "Representations") when, in fact, it was not (hereafter collectively "Deficiencies").

IV.

The Deficiencies were non-apparent to Magee and Carden/Limes or hidden from their view by Arkoma

and/or its Partners, agents, employees, and/or officers, but were well known to Arkoma and/or its Partners, agents, employees, and/or officers.

V.

Magee and Carden/Limes relied upon the Representations in investing their individual funds (hereafter "Investment") in Magee and in entering into the lease agreement and guaranty of June 27, 1984.

VI.

As a result of the Deficiencies, the Equipment could not be used, which resulted in the financial collapse of Magee and the loss of the Investment by Carden/Limes.

VII.

The Investment amounts to a sum in excess of $750,000.00 for which Arkoma and the Partners are liable, jointly, severally, and *in solido.*

WHEREFORE, Defendants, C. T. Carden and Leonard L. Limes, pray for judgment:

1. On the main demand in their favor and against the plaintiff, Arkoma Associates, rejecting its demands with prejudice at its cost, and

2. On the counterclaim, in their favor and against the defendants in counterclaim, Arkoma Associates, David A. Hepburn, Eldon Qualls, Richard K. Ledbetter, and Dudley B. Merkel, jointly, severally, and *in solido,* in the full and true sum of $750,000.00 together with legal

interest thereon from date of judicial demand until paid, and for all costs of these proceedings.

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

ARKOMA ASSOCIATES	*	CIVIL ACTION NO. 85-2295
VERSUS	*	
C. TOM CARDEN AND LEONARD L. LIMES	*	SECTION D, MAG.4
MAGEE DRILLING COMPANY, INTERVENOR	*	

* * * * * * * * * * * * *

INTERVENOR'S ANSWER AND COUNTERCLAIM

Intervenor, Magee Drilling Company (hereafter "Magee"), a Texas Corporation, responds to the complaint of Arkoma Associates (hereafter "Plaintiff"), as follows:

I.

FIRST DEFENSE

The complaint fails to state a claim against Magee upon which relief can be granted.

II.

SECOND DEFENSE

Answering categorically the numbered paragraphs of Plaintiff's complaint, Magee shows:

A) The allegations of Paragraph 1 are admitted;

B) The allegations of Paragraph 2 are denied;

C) The allegations of Paragraph 3 are denied, except to admit that Plaintiff and Magee executed a document styled "equipment lease" dated June 27, 1984 which was amended July 18, 1984 by an instrument attached to the original answer of C.T. Carden and Leonard L. Limes (hereafter "Carden/Limes") as Exhibit "A" hereafter "Lease");

D) The allegations of Paragraph 4 are denied except to admit that Carden/Limes executed a guaranty agreement which is a written document, the content of which is the best evidence of the guaranty, all allegations in conflict therewith being denied;

E) The allegations of Paragraph 5 are admitted;

F) The allegations of Paragraph 6 are denied except to admit that Carden/Limes received a letter dated February 18, 1985 from James D. Veselich, attorney at law, purporting to notify them of an alleged default by Magee under the terms of the Lease, and acknowledging acceptance of the possession of the equipment which was the subject of the Lease (hereafter "Equipment") by Plaintiff and the receipt of all rental due in connection therewith through the date of repossession;

G) The allegations of Paragraph 7 are denied; and

H) The allegations of Paragraph 8 are denied.

III.

THIRD DEFENSE

Further answering, Defendants show:

A) The Lease is void and Plaintiff's claim unenforceable for the following reasons:

1) The Plaintiff failed to deliver the Equipment, to such an extent as to constitute:

a) Fraud in the execution of the Lease or *fraud in the factum;* and

b) Failure of partial failure of consideration;

2) To the extent that the Lease provides that Plaintiff may regain possession of the Equipment and yet hold Magee and Defendants liable for rental accruing thereafter, the Lease is unconscionable;

3) Those provisions in the Lease calling for the payment of future rental following Plaintiff's repossession of the Equipment constitute an unlawful penalty clause;

4) Plaintiff, Carden/Limes, and Magee repudiated and/or voluntarily terminated the Lease at the time Plaintiff accepted delivery of the Equipment from Magee;

5) By accepting delivery of the Equipment from Magee, Plaintiff:

a) Elected its remedy of Lease cancellation; and

b) Is now estopped to claim enforcement of the Lease;

6) There was no meeting of the minds of Plaintiff, Defendants, and Magee as to the quantity or quality of the Equipment; and

7) Plaintiff failed to minimize any damages which it has sustained;

B) Magee paid all rental due under the Lease until such time as Plaintiff accepted possession of the Equipment from Magee;

C) In the event that this Court finds Magee to be indebted to Plaintiff for any sums whatsoever, Magee is entitled to setoff against any such sums all sums for which Plaintiff is indebted to Magee, as hereinafter alleged.

IV.

COUNTERCLAIM

Now, assuming the position of counterclaimant, Magee, with respect represents:

A) The following are made defendants in this counterclaim:

1) Arkoma Associates (hereafter "Arkoma"), a partnership organized under the laws of the state of Arizona;

2) David A. Hepburn (hereafter "Hepburn"), domiciled in the State of Arizona;

3) Eldon Qualls (hereafter "Qualls"), domiciled in the State of Oklahoma;

4) Richard K. Ledbetter (hereafter "Ledbetter") domiciled in the State of Oklahoma;

5) Dudley B. Merkel (hereafter "Merkel"), domiciled in the State of Arizona; and

B) On information and belief, it is alleged that Hepburn, Qualls, Ledbetter, and Merkel (hereafter collectively "Partners") are designated as the general partners of Arkoma and, as such, liable, jointly, severally and *in solido*, with Arkoma for the obligations of Arkoma.

C) Arkoma, through the Partners, its agents, employees, and/or officers represented to Magee and Carden/Limes that the Equipment leased by Arkoma to Magee would be be (sic) fully outfitted, ready for use, and capable of drilling to a depth of 7,500 feet (hereafter collectively "Representations") when, in fact, it was not (hereafter collectively "Deficiencies").

D) The Deficiencies were non-apparent to Magee and Carden/Limes or hidden from their view by Arkoma and/or its Partners, agents, employees, and/or officers, but were well known to Arkoma and/or its Partners, agents, employees, and/or officers.

E) Magee and Carden/Limes relied upon the Representations in entering into the Lease.

F) As a result of the Deficiencies, the Equipment could not be used, which resulted in the financial collapse of Magee and the loss of work and revenues amounting to approximately $1,000,000.00.

G) In an effort to render the Equipment usable as represented, Magee expended approximately $500,000.00, to no avail, for which it is entitled to recover of Arkoma.

WHEREFORE, Intervenor, Magee Drilling Company, prays for judgment:

1. On the main demand in its favor and against the plaintiff, Arkoma Associates, rejecting the demands of Arkoma Associates with prejudice at the costs of Arkoma Associates, and

2. On the counterclaim, in favor of Magee Drilling Co., and against Arkoma Associates, David A. Hepburn,

Eldon Qualls, Richard K. Ledbetter, and Dudley B. Merkel, jointly, severally, and *in solido* in the full and true sum of $1,500,000.00 together with legal interest thereon from the date of judicial demand until paid and for all costs of these proceedings.

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(Certificate of Service omitted in printing)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ARKOMA ASSOCIATES	*	CIVIL ACTION
VERSUS	*	NO. 85-2295
C. TOM CARDEN AND LEONARD L. LIMES	*	SECTION "D"
	*	MAG. DIV. 4

* * * * * * * * * * * * *

DEFENDANTS' AMENDED ANSWER AND COUNTERCLAIM

The amended answer and counterclaim of defendants, C. T. Carden and Leonard L. Limes (hereafter collectively "Defendants"), respectfully represents that they desire to amend their first amended answer in the following particulars:

I.

By adding the following additional defense:

IV.

FOURTH DEFENSE

Further answering, Defendants show:

A) The Lease is void and Plaintiff's claim unenforceable because of Plaintiff's untrue assertions that the Equipment was of a quality sufficient to execute the work for which it was intended; and

B) The Lease is void and Plaintiff's claim unenforceable because of Plaintiff's failure to disclose the true quality of the Equipment.

II.

By adding the following paragraphs to the counterclaim:

VIII.

The conduct of Arkoma and the Partners disclose a conscious indifference to the rights of Defendants rendering Arkoma and the Partners liable to Defendants for exemplary and punitive damages.

WHEREFORE, Defendants, C. T. Carden and Leonard L. Limes, pray for judgment:

1. On the main demand in their favor and against the plaintiff, Arkoma Associates, rejecting the demands of Arkoma Associates with prejudice at the cost of Arkoma Associates, and

2. On the counterclaim:

A) In their favor and against defendants in counterclaim, Arkoma Associates, David A. Hepburn, Eldon Qualls, Richard K. Ledbetter, and Dudley B. Merkel, jointly, severally and *in solido*, in the full and true sums of $750,000.00 as compensatory damages and $1,000,000.00 as exemplary and punitive damages together with legal interest thereon from date of judicial demand until paid, and for all costs of these proceedings.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ARKOMA ASSOCIATES	*	CIVIL ACTION
VERSUS	*	NO. 85-2295
	*	SECTION "D"
C. TOM CARDEN AND LEONARD L. LIMES	*	MAG. DIV. 4

* * * * * * * * * * * *

INTERVENOR'S AMENDED ANSWER AND COUNTERCLAIM

The amended answer and counterclaim of Intervenor, Magee Drilling Company (hereafter "Magee"), a Texas Corporation, respectfully represents that it desires to amend its original answer and counterclaim in the following particulars:

I.

By adding the following additional defense:

IV

FOURTH DEFENSE

Further answering, Magee shows:

A) The Lease is void and Plaintiff's claim unenforceable because of Plaintiff's untrue assertions that the Equipment was of a quality sufficient to execute the work for which it was intended; and

B) The Lease is void and Plaintiff's claim unenforceable because of Plaintiff's failure to disclose the true quality of the Equipment.

II.

By adding the following paragraphs to the counterclaim:

H) The conduct of Arkoma and the Partners disclose a conscious indifference to the rights of Magee rendering Arkoma and the Partners liable to Magee for exemplary and punitive damages.

I) The facts alleged as set out in paragraphs C, D and E are violations of the Texas Deceptive Trade Practices And Consumer Protection Act rendering Arkoma and the Partners liable to Magee for triple damages.

WHEREFORE, Intervenor, Magee Drilling Company, prays for judgment:

1. On the main demand in its favor and against the plaintiff, Arkoma Associates, rejecting the demands of Arkoma Associates with prejudice at the cost of Arkoma Associates, and

2. On the counterclaim, in favor of Magee Drilling Company, and against Arkoma Associates, David A. Hepburn, Eldon Qualls, Richard K. Ledbetter, and Dudley B. Merkel, jointly, severally, and *in solido* in the following amounts:

1. $1,500,000.00 compensatory damages;

2. $1,000,000.00 exemplary and punitive damages; and

3. $4,500,000.00 triple damages;

together with reasonable attorney fees and legal interest thereon from the date of judicial demand until paid and for all costs of these proceedings.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ARKOMA ASSOCIATES	*	CIVIL ACTION
VERSUS	*	NO: 85-2295
C. TOM CARDEN AND LEONARD L. LIMES	*	SECTION "D", MAG. DIV. 4

* * * * * * * * * * * *

PLAINTIFF'S ANSWER TO DEFENDANTS' AMENDED ANSWER AND COUNTERCLAIM

NOW INTO COURT, through its undersigned counsel, comes plaintiff Arkoma Associates, and in answer to defendants' Amended Answer and Counterclaim denies each and every allegation contained therein except as may be hereinafter specifically admitted. Plaintiff answers defendants' amended counterclaim as follows:

I.

Plaintiff admits this Court has jurisdiction over the limited partnership of Arkoma Associates (hereinafter "Arkoma"), but asserts that the court does not have jurisdiction over the individuals, David A. Hepburn, Eldon Qualls, Richard K. Ledbetter and Dudley B. Merkel (hereinafter "the General Partners"), and that they have not previously been parties to this action and therefore cannot be made defendants to this counterclaim.

II.

Plaintiff admits that the General Partners are general partners of Arkoma. Whether they are liable in any way

for the obligations of Arkoma is a question of law which need not be answered.

III.

Plaintiff denies that it made representations to defendants or Magee as alleged in Paragraph 3 of defendants' amended counterclaim, and further denies that the equipment to be leased was deficient as alleged by defendants.

IV.

Plaintiff denies that there were any deficiencies as alleged by defendants in Paragraph 4 of their amended counterclaim. Plaintiff alleges in the alternative, if there were such deficiencies, they were not known to exist by plaintiff and were not hidden by plaintiff and/or its partners, agents, employees, or officers.

V.

Plaintiff denies that it made such representations as alleged by defendants in Paragraph 5 of their amended counterclaim. Plaintiff lacks sufficient knowledge or information to form a belief in the remaining allegations contained in Paragraph 5, and therefore denies them.

VI.

Plaintiff denies there were any such deficiencies as alleged by defendants in Paragraph 6 of their amended counterclaim. Alternatively, plaintiff alleges that if there were such deficiencies, they did not prevent the use of

the equipment or result in the financial collapse of Magee or loss of investment by defendants.

VII.

Plaintiff denies that the General Partners or plaintiff are liable to defendants for any amount. Plaintiff lacks sufficient knowledge or information to form a belief in the amounts of any investment by defendants or others in Magee Drilling Company upon which to admit allegations as to the amount, and therefore denies defendants or Magee made investment in excess of $750,000 in Magee Drilling Company as alleged in Paragraph 7 of defendant's amended counterclaim.

FIRST AFFIRMATIVE DEFENSE

Plaintiff asserts as a first affirmative defense to defendants' Amended Answer and Counterclaim that the claims asserted against plaintiff therein are barred by the applicable statutes of limitation.

SECOND AFFIRMATIVE DEFENSE

Plaintiff asserts as a second affirmative defense to defendants' Amended Answer and Counterclaim that defendants' have waived the right, contractually and otherwise, to assert the claims made against plaintiff therein.

THIRD AFFIRMATIVE DEFENSE

Plaintiff asserts as a third affirmative defense to defendants' Amended Answer and Counterclaim that

defendants are estopped, contractually and otherwise, from asserting the claims made against plaintiff therein.

WHEREFORE, plaintiff Arkoma Associates, prays that defendants take nothing by their Amended Answer and Counterclaim and that the same be dismissed with prejudice, for costs and legal fees of defending that Counterclaim, and for such other and further relief as this Court may deem just and proper.

Respectfully submitted,

LEMLE, KELLEHER,
KOHLMEYER, DENNERY,
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ARKOMA ASSOCIATES	*	CIVIL ACTION
VERSUS	*	NO: 85-2295
C. TOM CARDEN AND LEONARD L. LIMES	*	SECTION: "D"
	*	MAG. DIV. 4

* * * * * * * * * * * *

PLAINTIFF'S ANSWER TO INTERVENOR'S ANSWER AND COUNTERCLAIM

NOW INTO COURT, through its undersigned counsel, comes plaintiff Arkoma Associates (hereafter "Arkoma"), and in answer to intervenor Magee Drilling Company's (hereinafter "Magee") Answer and Counterclaim denies each and every allegation contained therein except as may be hereinafter specifically admitted. Plaintiff answers intervenor's Counterclaim as follows:

A.

Plaintiff admits this Court has jurisdiction over the limited partnership of Arkoma Associates, but asserts that the Court does not have jurisdiction over the individuals, David A. Hepburn, Eldon Qualls, Richard K. Ledbetter, and Dudley B. Merkel (hereinafter "the General Partners"), and that they have not previously been parties to this action and cannot be made defendants to this counterclaim.

B.

Plaintiff admits that the General Partners are general partners of Arkoma. Whether they are liable in any way

for the obligations of Arkoma is a question of law which need not be answered.

C.

Plaintiff denies that it made representations to defendants or Magee as alleged in Paragraph C of intervenor Magee's Counterclaim, and further denies that the equipment to be leased was deficient as alleged by intervenor.

D.

Plaintiff denies that there were any deficiencies as alleged by intervenor Magee in Paragraph D of its Counterclaim. Plaintiff alleges in the alternative that if there were such deficiencies, they were not known to exist and were not hidden by plaintiff and/or its partners, agents, employees, of officers.

E.

Plaintiff denies that it made representations as alleged by intervenor Magee in Paragraph E of its Counterclaim. Plaintiff lacks sufficient knowledge or information to form a belief in the remaining allegations contained in Paragraph E, and therefore denies them.

F.

Plaintiff denies there were any such deficiencies as alleged by intervenor Magee in Paragraph F of its Counterclaim. Alternatively, plaintiff alleges that if there were such deficiencies, they did not prevent the use of the

equipment or cause the financial collapse of Magee or loss or (sic) revenues.

G.

Plaintiff denies that intervenor Magee had to expend approximately $500,000 to render the equipment usable. Alternatively, plaintiff denies that intervenor Magee is entitled to recover any such expenditures made to make the equipment usable.

FIRST AFFIRMATIVE DEFENSE

Plaintiff asserts as a first affirmative defense to intervenor's Answer and Counterclaim that the claims asserted against plaintiff therein are barred by the applicable statutes of limitation.

SECOND AFFIRMATIVE DEFENSE

Plaintiff asserts as a second affirmative defense to intervenor's Answer and Counterclaim that intervenor has waived, contractually and otherwise, the right to assert the claims made against plaintiff therein.

THIRD AFFIRMATIVE DEFENSE

Plaintiff asserts as a third affirmative defense to intervenor's Answer and Counterclaim that intervenor is estopped, contractually and otherwise, from asserting the claims made against plaintiff therein.

WHEREFORE, plaintiff, Arkoma Associates, prays that intervenor Magee take nothing by its Counterclaim

and that the same be dismissed with prejudice, for costs and legal fees of defending that Counterclaim, and for such other and further relief as this Court may deem just and proper.

Dated September 23, 1986.

Respectfully submitted,

LEMLE, KELLEHER,
KOHLMEYER, DENNERY,
HUNLEY, MOSS & FRILOT

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Attorneys for Arkoma Associates

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ARKOMA ASSOCIATES	*	CIVIL ACTION
VERSUS	*	NO. 85-2295
C. TOM CARDEN, LEONARD L. LIMES, and MAGEE DRILLING COMPANY	*	SECTION "D", MAG. (4)

* * * * * * * * * * * *

ANSWER TO COUNTERCLAIM

In answer to the counterclaim of defendants C. Tom Carden and Leonard L. Limes, plaintiff, Arkoma Associates, and the general partners of Arkoma Associates, David A. Hepburn, Eldon E. Qualls, Richard K. Ledbetter, and Dudley B. Merkel (hereinafter "counterclaim defendants") respectfully respond as follows:

FIRST DEFENSE

The counterclaim fails to state a claim against counterclaim defendants upon which relief can be granted.

SECOND DEFENSE

This Court lacks jurisdiction over the subject matter of the counterclaim.

THIRD DEFENSE

AND NOW, for answer to the individual allegations of the counterclaim, counterclaim defendants respectfully aver:

1.

The allegations of paragraph I of the counterclaim are admitted.

2.

It is admitted that David A. Hepburn, Eldon E. Qualls, Richard K. Ledbetter, and Dudley B. Merkel are the general partners of Arkoma Associates. The remaining allegations of paragraph II are denied.

3.

The allegations of paragraphs III, IV, VI, VII, and VIII are denied.

4.

Counterclaim defendants lack sufficient knowledge or information upon which to admit or deny the allegations of paragraph V, and on that basis deny the allegations contained therein.

WHEREFORE, counterclaim defendants pray that this Answer to Counterclaim be deemed good and sufficient and that the counterclaim filed herein be dismissed at defendants' cost.

LEMLE, KELLEHER,
KOHLMEYER, DENNERY,
HUNLEY, MOSS & FRILOT
BY: /s/ Dirk van Ausdall
MITCHELL J. HOFFMAN
DIRK van AUSDALL
2100 Pan American Life Center
601 Poydras Street
New Orleans, Louisiana 70130
Telephone: (504) 586-1241

Attorneys for Arkoma Associates, David A. Hepburn, Eldon E. Qualls, Richard K. Ledbetter, and Dudley B. Merkel

(Certificate of Service omitted in printing)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ARKOMA ASSOCIATES	*	CIVIL ACTION
VERSUS	*	NO. 85-2295
C. TOM CARDEN AND LEONARD L. LIMES	*	SECTION "D"
* * * * * * * * * * * *	*	MAG. DIV. 4

STIPULATION

IT IS HEREBY agreed and stipulated by and among Arkoma Associates, plaintiff, C. T. Carden and Leonard L. Limes, Defendants, each through undersigned counsel:

1) Arkoma Associates is alleged to be a limited partnership under the laws of the State of Arizona.

2) One of the alleged limited partners is a citizen of Louisiana for the purposes of jurisdiction based on diversity of citizenship.

3) The alleged general partners of Arkoma Associates and the states of their citizenship are as follows:

David Hepburn	-	Arizona
Dudley Merkel	-	Arizona
Richard Ledbetter	-	Oklahoma
Eldon Qualls	-	Oklahoma

4) This stipulation is in lieu of a formal amendment to the complaint insofar as it identifies the names and domiciles of the general partners.

Respectfully Submitted:

LEMLE, KELLEHER,
KOHLMEYER, DENNERY,
HUNLEY, MOSS & FRILOT

By: /s/ Mitchell J. Hoffman
Mitchell J. Hoffman
4040 One Shell Square
New Orleans, LA 70139
(504) 586-1323
Attorneys for Arkoma Associates

BERKE & INGOLIA

By: /s/ Richard K. Ingolia
Richard K. Ingolia
200 Oil and Gas Building
1100 Tulane Avenue
New Orleans, LA 70112
(504) 525-7703

By: /s/ Joseph M. Perry, Jr. by R.K.I.
Joseph M. Perry, Jr.
3850 N. Causeway Blvd.
Metairie, LA 70004
(504) 581-1821

Attorneys for C. T. Carden and Leonard L. Limes and Magee Drilling Company

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ARKOMA ASSOCIATES	*	CIVIL ACTION
VERSUS	*	NO. 85-2295
C. TOM CARDEN AND LEONARD L. LIMES	*	SECTION "D"
* * * * * * * * * * * *	*	MAG. DIV. 4

MOTION TO DISMISS FOR LACK OF JURISDICTION

C. T. Carden and Leonard L. Limes, defendants, move the Court to dismiss this action for lack of jurisdiction.

BERKE & INGOLIA
A PROFESSIONAL LAW CORPORATION
Co-Counsel for C. T. Carden and Leonard L. Limes
200 Oil & Gas Building
1100 Tulane Avenue
New Orleans, LA 70112
Telephone: 504/525-7703

By: /s/ Richard K. Ingolia
Richard K. Ingolia

JOSEPH M. PERRY, JR.
Co-Counsel for C. T. Carden and Leonard L. Limes
3850 North Causeway Blvd.
Metairie, LA 70002
Telephone: 504/831-9951

(Certificate of Service omitted in printing)

MINUTE ENTRY
McNAMARA, J.
April 23, 1986

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ARKOMA ASSOCIATES	*	CIVIL ACTION
VERSUS	*	NO. 85-2295
	*	SECTION "D"
C. TOM CARDEN, ET AL	*	(Filed April 23, 1989)

Before the court is the Motion of Defendants, C. Tom Carden and Leonard L. Limes, to Dismiss Plaintiff's action for Lack of Jurisdiction. The Motion was heard during a Pre-Trial Conference held in this matter on February 26, 1986. Counsel were ultimately given until April 4, 1986 to submit additional memoranda regarding the jurisdictional issue, with the matter being taken under advisement as of April 4, 1986.

Having considered the memoranda and argument of counsel and the applicable law, the court makes the following findings. There are essentially two arguments presented by Defendants in support of their Motion to Dismiss. First, Defendants argue that because Plaintiff, Arkoma Associates, is a general partnership rather than a limited partnership, in order to obtain diversity jurisdiction the citizenship of each and every one of the partners must be diverse from the citizenship of each Defendant. *Great Southern Fire Proof Hotel Co. v. Jones*, 177 U.S. 449, 456, 20 S.Ct. 690, 693, 44 L.Ed. 842, 845 (1900). Since one

of the partners is a citizen of the same state as Defendants[1], diversity does not exist; therefore, the suit should be dismissed for lack of jurisdiction.

The Court is unpersuaded by this argument. Pursuant to Section 29-302B of the Arizona Revised Statutes, the law which was in effect when Arkoma Associates was formed, a limited partnership is valid if there has been "substantial compliance in good faith" with Section 29-302A of the Arizona Revised Statutes. While Plaintiff did not comply with all the requirements of Section 29-302A[2], the court finds that the Plaintiff, in good faith,

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[1] Both of the Defendants are citizens of Louisiana and the parties have stipulated to the fact that one of Plaintiff's alleged limited partners is also a citizen of Louisiana.

[2] Section 29-302A of the Arizona Revised Statutes states, in pertinent part:

A. Two or more persons desiring to form a limited partnership shall:

1. Sign and acknowledge a certificate, which shall state:

. . .

(d) The name and place of residence of each member, general *and limited partners being respectively designated*. . . .

2. File for record the certificate in the office of the county recorder of the county in which the principal place of business is situated. [emphasis provided.]

Plaintiff failed to comply with this portion of A.R.S. § 29-302A in that Plaintiff did not state the name and place of residence of each of its limited partners in its original limited partnership certificate which was filed on September 1, 1981 with the recorder's office in Maricopa County, the county where Plaintiff's principal place of business is located.

substantially complied with the provisions of the statute, and therefore is a valid limited partnership under Arizona law.

Second, Defendants argue that even if Plaintiff is a limited partnership, diversity jurisdiction still does not exist since one must look to the citizenship of both general and limited partners for the purpose of determining whether of not complete diversity is present. If this is the case, then diversity jurisdiction is not present in this action since, as stated earlier, one of the limited partners is a citizen of the same state as Defendants. *See supra* n. 1.

While I am aware that the Third and Seventh Circuits support Defendants' position[3], I feel bound to uphold jurisdiction in this instance for the following reason. In *Lee v. Navarro Savings Association*, 597 F.2d 421 (5th Cir. 1979), the Fifth Circuit indirectly addressed the issue concerning whether or not the citizenship of limited partners is of any significance in determining if a federal court's diversity jurisdiction may be invoked. While *Lee* dealt with a business trust rather than a limited partnership, the court, by analogizing a business trust to a limited partnership, gave its view regarding the importance of a limited partner's citizenship for diversity purposes. The court reasoned:

> The trust here is analogous to a limited partnership and the citizenship of its beneficiary shareholders

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[3] *See Carlsberg Resources Corp. v. Cambria Savings and Loan Assn.*, 554 F.2d 1254 (3rd Cir. 1977), and *Elston Inv., Ltd. v. David Altman Leasing Corp.*, 731 F.2d 436 (7th Cir. 1984), for the views of the Third and Seventh Circuits, respectively, on this particular diversity question.

> should not be counted in determining the existence of diversity jurisdiction. The citizenship of the shareholder should be disregarded in the same manner as was done by the Second Circuit in *Colonial Realty Corp. v. Bache & Co.*, 358 F.2d 178, 184 (2nd Cir. 1966), *cert. denied*, 385 U.S. 817 (1966), where the court held that 'a suit brought against a New York [limited] partnership must thus be considered to be against the general partners only and identity of citizenship between a limited partner and the plaintiff does not destroy diversity.' [footnote omitted.] *Lee* at 425.

In light of this language and in the absence of any Supreme Court authority to the contrary[4], I am compelled by Fifth Circuit precedent to hold that diversity jurisdiction does exist in this matter; accordingly, Defendants' Motion to Dismiss Plaintiff's suit for lack of jurisdiction is DENIED. However, because I find that my order denying Defendants' Motion to Dismiss involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal

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[4] The Supreme Court reviewed the *Lee* opinion in *Navarro Savings Association v. Lee*, 446 U.S. 458, 100 S.Ct. 1779, 64 L.Ed.2d 425 (1980). While the Supreme Court ultimately affirmed the Fifth Circuit's holding in *Lee*, Defendants argue that in doing so, the Court rejected the appellate court's reasoning regarding whether or not the citizenship of limited partners should be considered in determining if a federal court has diversity jurisdiction over a particular action. However, I am unpersuaded by Defendants' argument and note the dissent of Justice Blackmun who "read[s] the court's opinion in [*Navarro*] as expressing no view on the diversity or citizenship issue that is presented when one of the parties is a limited partnership." *Id.* at 1789 n. 6 (Blackmun, J. dissenting).

from the order may materially advance the ultimate termination of the litigation, the court hereby certifies this matter for interlocutory appeal pursuant to 28 U.S.C. Section 1292(b).

* * * *

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 86-9201

USDA #CA 85-2295 D

ARKOMA ASSOCIATES,

Plaintiff-Respondent,

versus

C. TOM CARDEN and LEONARD L. LIMES,

Defendants-Petitioners.

- - - - - - - - - - -

Petition for Leave to Appeal an Interlocutory Order

- - - - - - - - - - -

Before POLITZ, GARWOOD, and JOLLY, Circuit Judges.

BY THE COURT:

On June 12, 1986, this Court directed that the petition of C. Tom Carden and Leonard L. Limes for leave to appeal an interlocutory order denying their motion to dismiss Arkoma Associates' action for lack of diversity jurisdiction be held in abeyance pending this Court's decision in 86-3128, Mesa Operating Limited Partnership v. Louisiana Intra State Gas Corporation. On August 18, 1986, this Court decided *Mesa Operating Limited Partnership*, holding that the citizenship of a limited partnership is determined by the citizenship of the general partners. ___ F.2d ___ (5th Cir., August 18, 1986, no. 86-3128, slip p. 9121). Based on that decision, we conclude that the petitioners have failed to establish that an appeal of the

interlocutory order would materially advance the ultimate termination of the litigation as required by 28 U.S.C. § 1292(b). Accordingly, IT IS ORDERED that the petition is DENIED.

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

January 12, 1987

Mr. Richard K. Ingolia
200 Oil & Gas Building
1100 Tulane Avenue
New Orleans, LA 70112

Re: C. T. Carden, et al.,
V. Arkoma Associates
No. 86-817

Dear Mr. Ingolia:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is denied.

Very truly yours,

Joseph F. Spaniol, Jr., Clerk
/s/ Joseph F. Spaniol, Jr.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ARKOMA ASSOCIATES	* CIVIL ACTION
versus	* NO. 85-2295
C. TOM CARDEN, ET AL.	* SECTION "D"
* * * * * * * * * * * *	* MAGISTRATE 4

JUDGMENT

The judgment of the United States District Court for the Eastern District of Louisiana in this civil action appears at page C-1 of petitioners' Petition for Writ of Certiorari.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ARKOMA ASSOCIATES	* CIVIL ACTION
	* NO. 85-2295
versus	* SECTION "D"
C. TOM CARDEN, ET AL.	* MAGISTRATE 4
* * * * * * * * * * * * *	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Findings of Fact and Conclusions of Law of the United States District Court for the Eastern District of Louisiana in this civil action appear at page C-3, et seq. of petitioners' Petition for Writ of Certiorari.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 87-3624
NO. 87-3917

ARKOMA ASSOCIATES,
Plaintiff-Counter Defendant-Appellee,

versus

C. TOM CARDEN and
LEONARD L. LIMES,
Defendants-Appellants,

MAGEE DRILLING COMPANY, INC.,
Intervenor-Counter Plaintiff-Appellant,

versus

DAVID HEPBURN, ET AL.,
Third Party Defendants-Appellees.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA
(CA-85-2295-D 4)

The opinion of the United States Court of Appeals for the Fifth Circuit in this civil action appears at page A-1 et seq. in petitioners' Petition for Writ of Certiorari.

STATE OF ARIZONA (SEAL)

Department Of State

UNITED STATES OF AMERICA SS.
STATE OF ARIZONA

I, ROSE MOFFORD, Secretary of State, do hereby certify that THE ATTACHED ARE TRUE, CORRECT AND COMPLETE COPIES OF THE AMENDED, RESTATED AND REFILED CERTIFICATE OF LIMITED PARTNERSHIP "ARKOMA ASSOCIATES LIMITED PARTNERSHIP", SECRETARY OF STATE CERTIFICATE NUMBER 20000200; WHICH AMENDED RESTATED AND REFILED CERTIFICATE OF LIMITED PARTNERSHIP WAS FILED IN THIS OFFICE SEPTEMBER 10, 1982; AND AMENDED APRIL 1, 1986; AND MARCH 9, 1987.

(SEAL) IN WITNESS WHEREOF I have hereunto set my hand and affixed the Great Seal of the State of Arizona. Done at Phoenix, the capital, this 27th day of FEBRUARY, A.D. 1986.

/s/ Rose Mofford

CERTIFICATE OF AMENDMENT
TO THE
LIMITED PARTNERSHIP AGREEMENT
OF
ARKOMA ASSOCIATES

Pursuant to the provisions of Arizona Revised Statutes Section 29-309 and the Power of Attorney conferred

upon the General Partners, the undersigned Limited Partnership hereby amends its Limited Partnership Agreement.

The Arkoma Associates Certificate of Limited Partnership as filed with the Maricopa County Recorder on September 1, 1981.

First: The name of the Limited Partnership has been changed from Arkoma Associates to Arkoma Associates Limited Partnership.

Second: Section 1.6 has been added to read as follows:

"1.6 *Statutory Agent*. The agent for service of process on the Partnership shall be Robert L. Bluemle, 3443 North Central Avenue, Suite 400, Phoenix, Arizona 85012."

Third: Section 3.5 has been amended to read as follows:

"3.5 *Withdrawal of Capital*. No Limited Partner shall have the right or power to withdraw from the Partnership except as may be specifically granted by this Agreement."

Fourth: Section 5.1 has been amended to read as follows:

"5.1 *Books of Account*. The Partnership's books and records shall be maintained at the place of business of the Partnership as defined in Section 1.3 hereof. Such books and records shall include the following:

5.1.1 A current list of the full name and last known business address of each partner set forth in alphabetical order,

5.1.2 A copy of the Certificate of Limited Partnership and all Certificates of Amendment thereto, together with executed copies of any Powers of Attorney

pursuant to which any certificate has been executed.

5.1.3 Copies of the Limited Partnership's federal, state and local income tax returns and reports, if any, for the three most recent years, and

5.1.4 Copies of any then effective written partnership agreements and of any financial statements of the Limited Partnership for the three most recent years. Those records are subject to inspection and copying at the reasonable request, and at the expense, of any partner during ordinary business hours.

The General Partner shall have the right, in its absolute discretion, to elect which method shall be used to calculate depreciation of any depreciable Partnership assets.

Fifth: The other provisions of the Limited Partnership Agreement in the form attached hereto are hereby confirmed.

Dated this 24th day of August, 1982.

ARKOMA ASSOCIATES LIMITED PARTNERSHIP

By /s/ David A. Hepburn
David A. Hepburn, General Partner
and Attorney in Fact of
Arkoma Associates Limited Partnership

By /s/ Dudley B. Merkel
Dudley B. Merkel, General Partner
and Attorney in Fact of
Arkoma Associates Limited Partnership

STATE OF ARIZONA)
) ss.
County of Maricopa)

SUBSCRIBED AND SWORN TO before me this 24th day of August, 1982 by David A. Hepburn, General Partner and Attorney in Fact of Arkoma Associates Limited Partnership and Dudley B. Merkel, General Partner and Attorney in Fact of Arkoma Associates Limited Partnership.

/s/ Karen J. Propps
Notary Public

My Commission Expires:
December 7, 1984

CERTIFICATE OF LIMITED PARTNERSHIP
AND
LIMITED PARTNERSHIP AGREEMENT
OF
ARKOMA ASSOCIATES
PARTNERS (PT)

This LIMITED PARTNERSHIP AGREEMENT ("Agreement") is made and entered into by and among David A. Hepburn, Dudley B. Merkel, Arizona residents, and Richard Ledbetter and Eldon Qualls, Oklahoma residents, (the "General Partners") and each of the persons who shall become a party to this Agreement (the "Limited Partners") in accordance with the provisions of the Uniform Limited Partnership Act, Title 29, Chapter 3 of the Arizona Revised Statutes. (The General Partners and the Limited Partners shall be referred to collectively as "Partners").

The Partners hereby agree as follows:

ARTICLE I

Organization

1.1 *Formation.* The parties hereto have agreed to form and by executing this Agreement hereby enter into a limited partnership (the "Limited Partnership") formed under the Uniform Partnership Act of the State of Arizona (the "Act"), which shall govern the rights and liabilities of the parties, except as otherwise herein expressly stated.

1.2 *Name.* The business of the Limited Partnership shall be conducted under the name "Arkoma Associates."

1.3 *Place of Business.* The principal place of business of the Limited Partnership shall be at 2701 East Camelback Road, Suite 323, Phoenix, Arizona 85016 provided, however, that the General Partners may change the address of the principal place of business by notice in writing to all Limited Partners. In addition, the Limited Partnership may maintain such other offices as the General Partners may deem advisable at any other place or places within the United States.

1.4 *Purpose.* The primary purpose of the Partnership shall be to purchase, hold and lease two land oil and gas drilling rigs (the "Rigs"). The Partnership initially intends to lease the Rigs to a drilling company which is an affiliate of two of the General Partners pursuant to a Master Lease Agreement (the "Lease") which terms will include the provision for a conditional option for the drilling company to purchase the Rigs at the expiration of the term of such lease. The Partnership may participate in a joint venture involving the use of the Rigs in an oil and

gas drilling program. In addition, the Partnership may otherwise improve, maintain, operate, finance, sell, dispose of or otherwise invest in and deal with the Rigs.

1.5 *General Partners.* The names and business addresses of the General Partners are as follows:

David A. Hepburn
Dudley B. Merkel
2701 East Camelback Road, #323
Phoenix, Arizona 85016

Richard Ledbetter
Eldon Qualls
325 S. Scott
Del City, Oklahoma.

ARTICLE II

Term of Limited Partnership

2.1 *Commencement.* The Limited Partnership shall commence on the date (the "Effective Date") that a Certificate of Limited Partnership (the "Certificate") has been filed under the Act; provided, however, that the Certificate shall not be filed and the Limited Partnership shall not be formed unless the General Partners determine that sufficient capital contributions have been received to warrant acquisition of the Rigs.

2.2 *Termination.* Unless earlier terminated under the provisions of this Agreement, the Limited Partnership shall terminate on the 25th anniversary of the Effective Date.

ARTICLE III

Capital Contributions

3.1 *General Partners.* The General Partners shall make a capital contribution of property to the Partnership in an amount equal to or greater than 1% of the aggregate capital contributions to the Partnership by all the Partners. Either before or promptly after the Effective Date, the General Partners shall contribute to the Partnership all of their rights, titles and interests in and to any contracts for the construction of the Rigs, and any purchase orders for equipment for the Rigs. For their contribution, the General Partners shall receive an aggregate interest in 1% of the profits and losses of the Partnership as described in ARTICLE IV.

3.2 *Limited Partners.* Capital of the Limited Partners shall be contributed in Units of $94,686. Payment for the Units shall be made at the time of subscription and shall be evidenced by either (i) a check in an amount representing the number of Units subscribed for; (ii) through letter of credit financing under terms and conditions as described in the Subscription Agreement issued in connection with the offering of Partnership interests.

3.3 *Assessments.* No Limited Partner shall be required to make any additional capital contribution beyond that provided for in paragraph 3.2.

3.4 *Loans.* If the General Partners determine that the business of the Partnership requires capital for any reason in addition to that contributed by the Partners, the General Partners shall grant to the Partners or to unaffiliated persons, the right to loan or advance such funds to

the Partnership upon terms and conditions to be agreed upon among the parties; provided, however, that any such loans shall be only on an unsecured basis. The amount of any loan from a Partner shall not be an increase in the capital account of the lending partner or entitle the lending partner to any increase in his distributions of the Partnership.

3.5 *Withdrawal of Capital.* No Limited Partner shall have the right to withdraw or reduce his contribution to the capital of the Partnership except as the result of dissolution of the Partnership, or as otherwise provided in the Act.

3.6 *Capital Accounts.* The General Partners shall cause to be maintained in the books and accounts of the Partnership a capital account for each Partner to which shall be credited his or her capital contributions and which shall be increased by (a) any additional capital contributions, (b) that Partner's distributive share of Partnership profits and decreased by (i) that Partner's distributive share of Partnership losses and (ii) any distribution of cash or property in reduction of that Partner's capital contribution.

ARTICLE IV

Profits and losses; Allocations, Distributions

4.1 *Profit and Loss.* Each of the following shall be allocated at the end of each fiscal year to the respective accounts of the Partners in the ratio of 1% to the General Partners and 99% to the Limited Partners:

(1) All income of the Limited Partnership, including gains realized upon the sale, exchange or involuntary conversion of any part or all of the assets of the Limited Partnership;

(2) All losses of the Limited Partnership; and

(3) All Federal and state income tax deductions and credits which are available to the Partnership.

The net Profits and net Losses shall be computed each quarter and divided among and charged against those who are Partners at the start of each quarter in proportion to their Partnership interests. Upon transfer of a Limited Partnership interest, Profit and Loss will be allocated to the transferee beginning with the next quarter.

4.2 *Allocation of General Partners' Interest.* The 1% interest in the Partnership held by the General Partners shall be allocated as follows: David A. Hepburn, 0.25%; Dudley B. Merkel, 0.25%; Richard Ledbetter, 0.25%; and Eldon Qualls, 0.25%.

4.3 *Allocation Upon Transfer of Interests.* Upon any transfer of a Partnership interest, the distributive share of all items of income or loss of the Partnership for the relevant year shall be allocated between the transferor and the transferee on the basis described in paragraph 4.1 hereof.

4.4 *Distributions.* Cash available for distribution shall be distributed quarterly (or at such more frequent intervals as the General Partners may determine) to the Partners in accordance with their Partnership interests at the time of distribution. Each such Limited Partner's

interest shall be equal to the percentage derived by multiplying the aggregate Limited Partnership interests by a fraction whose numerator is the number of Units held by the individual Limited Partner and whose denominator is the total number of Units.

4.5 *Depreciation and Depletion Deductions.* Pursuant to Section 704 of the Internal Revenue Code and for purposes of any applicable state or local income tax law, the Partners agree that all items of income, gain, loss, deductions including but not limited to the depreciation deduction and credit of the Partnership shall be allocated among the Partners in accordance with the provisions of Paragraphs 4.1 and 4.2 above. For the purpose of computation of the allowance for depletion, the Partnership's basis in Partnership oil and gas properties shall be allocated to the Partners on the basis of each Partner's share of income of the Limited Partnership.

Each Partner shall be required to report annually back to the Partnership through the General Partners, the amount and method of computing his or her depletion deduction, whether percentage depletion or cost depletion.

4.6 *Intangible Drilling and Development Costs.* For federal income tax purposes and to the extent permitted for state and local income tax purposes, the Partnership shall elect to charge to expense all intangible drilling and development costs pursuant to the provisions of Section 263(c) of the Internal Revenue Code. All such intangible drilling and development costs shall be allocated among the Partners in accordance with the provisions of Paragraphs 4.1 and 4.2 above.

ARTICLE V

Books and Records

5.1 *Books of Account.* The Partnership shall maintain, at the office of the Partnership or of its accountant, books, records, and accounts which fairly present the operations of the Partnership. The books shall be available for inspection by any Partner, general of limited, or the representatives of any Partner, at all reasonable times. The General Partner shall have the right, in its absolute discretion to elect which method shall be used to calculate depreciation of any depreciable Partnership assets.

5.2 *Statements.* Within sixty (60) days after the close of each Partnership accounting year (which year shall close December 31), and upon the termination of the Partnership, the General Partners shall prepare and cause to be examined and reported upon by an independent certified public accountant a report of the Partnership's operations including such detailed information as is necessary to enable the Limited Partners to complete their tax returns. Within sixty (60) days after the close of the period covered by the report, a copy or condensed version of such report shall be furnished to each of the Partners.

5.3 *List of Partners.* At any time any Limited Partner may demand a list of the names and addresses of, and interests held by, all Partners. The General Partners shall furnish such list within ten (10) days of receipt of such demand.

ARTICLE VI

Management

61. *Powers of the General Partners.* The General Partners shall manage and shall have exclusive and complete control of the operations of the Partnership and shall have power to do all things necessary or advisable to carry out the purposes of the Partnership. Without limiting the generality of the foregoing, the General Partners shall have full power and authority, on behalf of the Partnership:

(a) to expend Partnership funds in furtherance of the business of the Partnership and to acquire the Rigs and to execute, deliver and carry out the terms of the Lease on behalf of the Partnership; (b) to lend money of the Partnership to affiliates of any of the General Partners; (c) to hold, improve, maintain, operate, finance, lease, sell, dispose of and otherwise deal with and invest in the Rigs; (d) to enter into joint ventures, farm-outs, contract drilling or other arrangements involving the use of the rigs with any person including affiliated parties; (e) to pay all debts and obligations of the Partnership; (f) to lend money to the Partnership and secure such indebtedness by pledging assets of the Partnership; (g) to make such elections under the tax laws of the United States, the several states and other relevant jurisdictions as to the treatment of items of Partnership income, gain, loss, deduction and credit, and as to all other relevant matters, as it believes necessary or desirable; (h) to determine the terms of the offering of Limited Partnership interests, including the amount of discounts allowable, commissions to be paid and the manner of complying with applicable law; (i) to execute an agreement(s) with affiliated or unaffiliated persons or entities in connection with the offering and sale of Partnership interests, (j) to employ such agents, employees, independent contractors, attorneys and

accountants as the General Partners deem reasonably necessary, including persons affiliated with the General Partners; (k) to effect necessary insurance for the proper protection of the Partnership and (l) of the General and Limited Partners, or (2) of either the General Partners or Limited Partners; (l) to pay, collect, compromise, arbitrate, of otherwise adjust any and all claims or demands of or against the Partnership: (m) to bind the Partnership in all transactions involving the Partnership's property or business affairs.

6.2 *Duties and Restrictions on the Authority of the General Partners.*

The General Partners shall:

(a) have the obligation to use their best efforts to cause the lessee of the Rigs to observe all the terms and conditions of the Lease, including maintenance of appropriate insurance coverage, and payment of all taxes required pursuant to such Lease, and shall be under a fiduciary duty to conduct the affairs of the Partnership in the best interests of the Partnership. The General Partners shall at all times act in good faith and exercise due diligence in all activities relating to the conduct of the business of the Partnership.

(b) not permit any person who makes a loan to the Partnership to acquire, at any time as a result of making the loan, any direct of indirect interest in the profits, capital, or property of the Partnership, other than as a secured creditor;

(c) not do business in any jurisdiction or political subdivision in which the General Partners and the Partnership have not previously taken such steps as may be necessary to assure for the Limited Partners the same

limited liability as is provided for limited partners in limited partnerships formed under the Act;

(d) not commingle the Partnership's funds or assets with those of any other person, or employ or permit any person to employ such funds or assets in any manner except for the exclusive benefit of the Partnership;

(e) not bind or obligate the Partnership with regard to any matter outside the scope of the Partnership business;

(f) not use the Partnership name, credit, or property for other than Partnership purposes;

(g) not sell or otherwise dispose of the Rigs without the affirmative vote of 80% of all the Limited Partners.

6.3 *Disposition of a Rig.* Except as provided in Section 6.2, the General Partners shall have the right, power and authority to lease, sell, exchange, refinance or grant an option for the sale of, all or any portion of the property of the Partnership at such rental, price or amount, for cash, securities or other property and upon such other terms as the General Partners, in their sole discretion, deem proper. The proceeds resulting from any refinancing if the Rigs or other property of the Partnership may not be reinvested in new acquisitions of drilling rigs.

6.4 *Relationship Among General Partners.* Without limitation of each General Partner's joint and several responsibility to perform all obligations required of the General Partners under this Agreement or at law, as among the General Partners, each General Partner agrees

to perform his obligations under this Agreement and agrees to indemnify and hold the other General Partners harmless for all liability, loss, cost and expense (including, without limitation, the cost of litigation and attorneys' fees) incurred by the other General Partners as a result of such General Partner's failure to so perform such obligations. In the event of any dispute or difference among the General Partners which cannot be decided by the General Partners, the decision shall be reached by arbitration in accordance with the then current rules of the American Arbitration Association.

6.5 *Allocation of Time to Partnership Business.* The General Partners shall not be required to devote full time to the affairs of the Partnership but shall devote whatever time, effort and skill may be necessary for the conduct of the Partnership's business. The General Partners may engage in any business they individually or collectively choose, including businesses related to or competitive with the business of the Partnership. The General Partners may engage any person or entity, including affiliates, as agent for them, to perform all or any part of their duties hereunder; provided, however, that the General Partners will retain overall responsibility, for the management of the Partnership's business.

6.6 *Compensation of General Partners.*

(a) Messrs. Merkel and Hepburn shall receive an organization and lease acquisition fee in an amount equal to the net syndication fees as defined in the Private Offering Memorandum issued in connection with the offering of Partnership Interests.

(b) As an administrative management fee, Messrs. Merkel and Hepburn shall receive reimbursement for the actual costs incurred by them in managing the business affairs of the Partnership.

(c) The Partnership will bear the expense and the General Partners will be reimbursed from Partnership funds for any advances made for all expenses of the Partnership's accountants, legal counsel, documentation, printing expenses and other expenses incurred in the formation of the Partnership and in arranging the purchase of the Rigs.

6.7 *Indemnification of General Partners.* No General Partner shall be liable, responsible or accountable in damages or otherwise to any of the Partners for, and the Partnership shall indemnify and save harmless the General Partners from, any loss or damage incurred by reason of any act or omission performed or omitted by him in good faith on behalf of the Partnership or the Limited Partners and in a manner reasonably believed by him to be within the scope of the authority granted to him by this Agreement and in the best interests of the Partnership or the Limited Partners, provided that such act or omission was not performed or omitted fraudulently or in bad faith, constituted gross negligence or any other breach of fiduciary duty with respect to such acts or omissions and further provided that the satisfaction of any indemnification and any saving harmless shall be from the Partnership assets and no Limited Partner shall have any personal liability on account thereof.

ARTICLE VII

Limited Partners

7.1 *No Participation in Management.* The Limited Partners shall not take any part in the control or management of or transact any business for the Partnership, nor shall the Limited Partners have power to sign for or to bind the Partnership. The Limited Partners shall not be personally liable for any of the debts or losses of the Partnership or for the losses of the General Partners.

7.2 *Participation in Other Activities.* This Agreement shall not preclude or limit, in any respect, the right of any Limited Partner (or officer, director, stockholder, partner, trustee or beneficiary thereof) to engage or invest in any business activity of any nature or description, including those which may be equivalent to or in competition with the Partnership. Neither the Partnership nor any Limited Partner shall have any right by virtue of this Agreement or any relationships created hereby in or to such other ventures or activities or to the income or proceeds derived therefrom.

7.3 *Rights of Limited Partners.*

(a) A limited partner shall have the same rights as a general partner to:

(1) Have the partnership books kept at the principal place of business of the partnership, and at all times to inspect and copy any of them.

(2) Have on demand true and full information of all things affecting the partnership, and a formal account of partnership affairs whenever circumstances render it just and reasonable.

(3) Have dissolution and winding up by degree of court.

(b) A limited partner shall have the right to receive a share of the profits or other compensation by way of income, and to the return of his contribution as provided in Articles III and IV respectively.

7.4 *Meetings.* The General Partner or Limited Partners representing 33-1/3% of the Limited Partnership Interests may at any time on at least fifteen (15) days' written notice to all Partners call a meeting of the Partnership. Unless otherwise specified, all meetings of the Partnership shall be held at 2:00 P.M. at a location specified by the General Partners. At any meeting of the Partnership, Limited Partners may vote in person or by proxy. Limited Partners holding 66-2/3% of the Limited Partnership interests present in person or by proxy, shall constitute a quorum at any Partnership meeting. Any question relating to the Partnership which may be considered and acted upon by the Limited Partners hereunder (whether by written statement upon notice or otherwise) may be considered and acted upon by vote of the required percentage of Limited Partnership Interests at a Partnership meeting. Procedure for such meetings shall be according to the Robert's Rules of Order, with one of the General Partners designated by the General Partners as chairman.

ARTICLE VIII

Transfer of Partnership Interests

8.1 *Interest of General Partners.* Subject to the provisions of Paragraph 6.8, the interest in the Partnership

held by any 1 or 2 of the individual General Partners may be transferred with the consent of the remaining General Partners and notice of the transfer to the Limited Partners. Should more than 2 of the General Partners desire to transfer their interest for any reason, such transfer(s) shall not occur without the consent of Limited Partners holding 66-$^{2}/_{3}$% of the Limited Partnership interests.

8.2 *Assignment of Limited Partnership Interests.* Each Limited Partner may assign his interest in whole or in part, with the prior written consent of the General Partners, subject to compliance with applicable law and regulations and subject to the provisions of this paragraph. Any assignment must relate to at least one Unit and no partial assignment may result in any Limited Partner or assignee holding less than one Unit of Limited Partnership interest. No assignment shall be effective until notice containing such information and representations as the General Partners may reasonably request, signed by both the assignor and the assignee, and accompanied by such opinions or other documents as may be required to satisfy any requirement of this paragraph, has been received by the General Partners. Any assignment which is permitted hereunder shall be effective as of the close of the calendar quarter during which such notice is received. No assignment which, in the judgment of the General Partners made by written notice to the assignor within thirty (30) days of receipt of the aforesaid notice, would jeopardize the status of the Partnership as a partnership or cause a termination of the Partnership for Federal Income Tax purposes shall be effective for any purpose. No assignment shall be permitted unless a registration statement has been filed and become effective under the Securities Act of 1933 or an exemption is available, and

all other requirements of law have been satisfied, as evidenced by a no-action letter of the Securities and Exchange Commission or an opinion of counsel to the assignee or assignor satisfactory to counsel for the Partnership.

8.3 *Substituted Limited Partner.* The transferee of any Limited Partnership interest may become a Substituted Limited Partner only with the content of all the Partners. A transferee becomes a Substituted Limited Partner when the Certificate of Limited Partnership is effectively amended to reflect such substitution; such amendment shall be accomplished as soon as practicable after the Partners consent to such substitution. A transferee who does not become a Substituted Limited Partner has no right to any information regarding the Partnership or to inspect the Partnership books but is entitled only to a share of income or return of capital to which the transferor would be entitled.

ARTICLE IX

Dissolution of the Partnership

9.1 *Events Causing Dissolution.* The Partnership shall dissolve and terminate upon the occurrence of any of the following events:

(a) The bankruptcy, death, dissolution or adjudication of incompetence of a sole remaining General Partner, provided, however, that the business of the Partnership may be continued and the Partnership reconstituted if 80% of the Limited Partners so agree.

(b) Sale or other disposition of all the property of the Partnership;

(c) Dissolution and winding up by decree of court.

(d) The occurrence of any other event causing the dissolution of the Partnership under the laws of the State of Arizona.

(e) The affirmative vote of 80% of the Limited Partners.

9.2 *Winding Up.* Upon dissolution of the Partnership, the General Partners shall wind up the Partnership's affairs by liquidating its assets and applying its funds in the following manner: (1) the liabilities of the Partnership shall be paid or otherwise adequately provided for; (2) any excess funds shall be distributed to the Partners in proportion to their respective capital accounts at the time of distribution.

ARTICLE X

Power of Attorney

10.1 *Grant of Power of Attorney.* Each of the Limited Partners irrevocably constitutes and appoints the General Partner as his true and lawful attorney-in-fact: (i) to make, execute, swear to, acknowledge and file, in his name, place and stead, such documents as the Limited Partners have expressly agreed to execute and deliver hereunder, including, without limitation, the original and any modification, amendment or cancellation of the Certificate of Limited Partnership and any Fictitious Business Name Statement; (ii) to obtain a loan for the account of the Partnership, the principal amount being secured by letters of credit and funds as set forth more fully in the Subscription Agreements of the Limited Partners.

ARTICLE XI

Miscellaneous

11.1 *Covenant to Sign Document.* Without limiting the power granted by paragraph 10.1, each Partner covenants, for himself and his successors and assigns, to execute, with acknowledgment or verification if required, any and all documents and writing which may be necessary or expedient in the creation of the Partnership and the achievements of its purposes, specifically including the Certificate of Limited Partnership and all amendments thereto, as well as any cancellation thereof.

11.2 *Tax Returns.* Each Partner hereby agrees to execute promptly (with acknowledgment or affidavit, if requested by the General Partners) all such agreements, certificates, tax statements, tax returns and other documents as may be required of the Partnership or its Partners by the laws of the United States of America or any state in which the Partnership conducts or plans to conduct business.

11.3 *Notices.* All notices which any Partner may desire or may be required to give any other Partner shall be in writing and shall be given either personally or by prepaid first class mail directly to the Partner's address as shown on the Certificate of Limited Partnership, or as later entered upon the books of the Partnership pursuant to written notification to the General Partner.

11.4 *Recovery of Attorneys' Fees.* If the Partnership or any Partner on behalf of the Partnership is a party to an action to enforce any of the terms of this Partnership Agreement or of any other contract relating to the Partnership, or any action in any other way pertaining to Partnership affairs of this Agreement, the Partnership or

such Partner, if it or he prevails, shall be entitled to recover its or his costs, including a reasonable attorney's fee, incurred in prosecuting or defending the action.

11.5 *Applicable Laws.* The laws of the State of Arizona shall govern all matters with respect to this Agreement, including all matters related to formation, construction and performance of this Agreement.

IN WITNESS WHEREOF, each party has executed this Limited Partnership Agreement on the date set forth opposite the name of each.

For the General Partners:

Date: 8/31/81

/s/ David A. Hepburn
General Partner

Date: 8/31/81

For each of the persons named in the attached Schedule A, which names are by this reference are incorporated herein

By: Dudley Merkel
General Partner

ARKOMA ASSOCIATES

Schedule "A" to Certificate of Limited Partnership and Limited Partnership Agreement.

Limited Partner	*Address*	*Subscription Amount*	*Number of Units*

The Office of the Secretary of State Hereby Disclaims Any Representation the these Documents, Filed Pursuant to the Uniform Limited Partnership Act, Conform to Law.

/s/ Rose Mofford
Arizona Secretary of State

SECOND
CERTIFICATE OF AMENDMENT
TO THE
CERTIFICATE OF LIMITED PARTNERSHIP
AND
LIMITED PARTNERSHIP AGREEMENT
OF
ARKOMA ASSOCIATES LIMITED PARTNERSHIP

(Filed 1, April 1986)

Pursuant to the provisions of Arizona Revised Statutes Section 29-309, the undersigned Limited Partnership hereby amends its Certificate of Limited Partnership and Limited Partnership Agreement.

The Certificate of Limited Partnership of Arkoma Associates Limited Partnership was filed with the Maricopa County Recorder on September 1, 1981. A Certificate of Amendment was filed with the Arizona Secretary of State on September 10, 1982.

First: Schedule "A" to the Certificate of Limited Partnership and Limited Partnership Agreement is hereby amended to read as follows:

SCHEDULE "A"

ARKOMA ASSOCIATES
LIMITED PARTNERS

	No. of Units
Mr. Lloyd Canton CA Planning 25 Orinda Way, Suite 308 PO Box 429 Orinda, CA 94563	
Ms. Marie Weaver c/o Lloyd Canton PO Box 429 Orinda, CA 94563	1/2
Mr. Richard Aylward Mr. Robert Aylward Aylward Products 1201 Forest Street Kansas City, MO 64106	1
Larry Berberich 10706 West 109th Overland Park, KS 66220	1
Dr. Allen Parelman 6724 Troost Kansas City, MO 64131	1/2
Mr. Bill Kryger 217 West 125th Terrace Kansas City, MO 64145	1
LVA Partnership c/o Allen Abramson PO Box 6925 Kansas City, MO 64130	1
Dr. Richard Lynch #2 35th Street Des Moines, IA 50312	1

McFadin Partnership Three Oaks Building 5440 North Oak Kansas City, MO 64118	1
John McKeever 12438 West 85th Terrace Lenexa, KS 66215	1/2
Mr. Percy McKinley 12813 Oakmont Drive Kansas City, MO 64145	1/2
Mr. Nat N. Nast 2920 West 68th Street Mission Hills, KS 66208	1/2
Dr. John Pawsat 1210 West 58th Street Kansas City, MO 64113	1/2
Mr. Henry Rankin 11725 North Eastern Kansas City, MO 64156	1
Mr. David Russell 1050 Home Savings Building 1006 Grand Avenue Kansas City, MO 64106	1
Mr. Robert Sampson 15 Town View Circle Platte City, MO 64079	1
Dr. Daniel Scharf 2502 West 69th Terrace Mission Hills, KS 66208	1
Mr. Robert Schneider 8650 West College Boulevard Suite 201 Overland Park, KS 66210	1

Mr. Lary Schulz
8320 North Oak Trafficway
Kansas City, MO 64118 — 1/2

Mr. Keith Shultz
PO Box 2172
Independence, MO 64055 — 1

Mr. Elton Shannon
3508 West 83rd Terrace
Shawnee Mission, KS 66206 — 1/2

Mr. Ernest Straub
9308 West 87th Terrace
Shawnee Mission, KS 66212 — 1

Mr. Henry Stram
194 Belle Terre Drive
Covington, LA 70433 — 1

Ms. Frances Swan
8015 West 115th Street
Overland Park, KS 66210 — 1

Mr. John Sullivan
Mid American Bank & Trust Co.
PO Box 2947
Shawnee Mission, KS 66201 — 1

Mr. Jon Symon
100 Westport Square
4200 Pennsylvania
Kansas City, MO 64111 — 1/2

Mr. David Wharton
2 Northwest 53rd Terrace
Kansas City, MO 64118 — 1

Dale Williams
1191 Highway 152
Liberty, MO 64068 — 1/2

Dr. Robert Doering
6101 High Drive
Shawnee Mission, KS 66208 — 1

Mr. Jim Veselich
James D. Veselich & Associates
5440 North Oak Trafficway
Kansas City, MO 64118 — 1

Second: The other provisions of the Limited Partnership Agreement are hereby confirmed.

DATED this 31st day of March 1986.

ARKOMA ASSOCIATES LIMITED PARTNERSHIP

By /s/David A. Hepburn
David A. Hepburn, General Partner and Attorney-in-Fact of Arkoma Associates Limited Partnership

By /s/ Dudley B. Merkel
Dudley B. Merkel, General Partner and Attorney-in-Fact of Arkoma Associates Limited Partnership

STATE OF ARIZONA)
) ss.
County of Maricopa)

SUBSCRIBED AND SWORN TO before me this 31 day of March 1986 by David A. Hepburn, General Partner, and Dudley B. Merkel, General Partner, of Arkoma Associates Limited Partnership.

/s/ Susan B. Crawford
Notary Public
(SEAL)

My Commission Expires:
Feb. 27, 1989